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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/046,097	01/07/2002	Manfred Baldauf	GR99P8087	9969
7590 03/10/2004			EXAMINER	
LERNER AND GREENBERG, P.A. 2445 Hollywood Boulevard Hollywood, FL 33020			WINTER, GENTLE E	
			ART UNIT	PAPER NUMBER
			1746	

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/046,097	<b>Applicant(s)</b> BALDAUF ET AL.	
	<b>Examiner</b> Gentle E. Winter	<b>Art Unit</b> 1746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-67 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-4, drawn to a fuel cell, classified in class 429, subclass 27;
  - II. Claims 5-35 drawn to fuel cell installation, classified in class 429, subclass 22;
  - III. Claims 36-50 drawn to a method, classified in class 429, subclass 26;
  - IV. Claims 51-61 drawn to a method, classified in class 429, subclass 25;
  - V. Claim 64, drawn to a fuel cell installation, classified in class 429, subclass 305;
  - VI. Claim 65, drawn to a fuel cell installation, classified in class 429, subclass 126;
  - VII. Claim 66 drawn to a fuel cell installation, classified in class 429, subclass 62;
  - VIII. Claim 67 drawn to a method, classified in class 429, subclass 13.
2. The inventions are distinct, each from the other because of the following reasons:
3. Inventions III, IV & VIII and I, II & V-VII are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the process for using the product as claimed can be practiced with another materially different product. In this case the process as claimed can be practiced by another materially different apparatus or by hand. Specifically, a bomb calorimeter

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could be used to carry out the method of claim 36 and 51 and an automobile could be used to carry out the method of claim 67.

4. Inventions III, IV and VIII, are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together, they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different modes of operation, different functions, different effects and are not disclosed as capable of use together. Specifically, the methods are not disclosed as, and could not be usable together and have different modes of operation.

5. Inventions I, II, V, VI, VII are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together, they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the different inventions not disclosed as capable of use together, and have different modes of operation, different functions, and different effects.

6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

7. This application contains claims directed to the following patentably distinct species of the claimed invention:

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- a. Process Gas
  - i. Preheated
  - ii. Filtered
  - iii. Prepared
  - iv. Crosscurrent
  - v. Countercurrent
- b. Coolant
  - vi. Preheated
  - vii. Filtered
- c. Temperature Maintenance
  - viii. Latent heat storage
  - ix. Thermal insulation
  - x. Local heater
- d. Fluid mover
  - xi. Blower
  - xii. Compressor
- e. Stack
  - xiii. With an insulated part and an uninsulated part; and a membrane separating said insulated part from said uninsulated part.
  - xiv. With an insulated part and an uninsulated part; and a convection barrier separating said insulated part from said uninsulated part.

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- xv. With an insulated part and an uninsulated part; and a thermal barrier separating said insulated part and said uninsulated part.
  - xvi. With an insulated part and an uninsulated part; and a flap separating said insulated part and said uninsulated part.
  - f. Closable feed opening
    - xvii. A process-gas feed line connected to said closable feed opening.
    - xviii. A coolant feed line connected to said closable feed opening.
8. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.
9. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.
10. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

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11. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

12. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

13. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

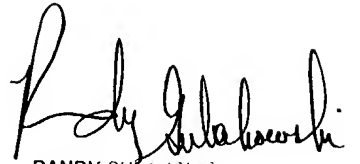
14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gentle E. Winter whose telephone number is (571) 272-1310. The examiner can normally be reached on Monday-Friday 7:00-3:30.

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15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Randy P. Gulakowski can be reached on (571) 272-1302. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions on access to the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Gentle E. Winter  
Examiner  
Art Unit 1746

  
RANDY GULAKOWSKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700